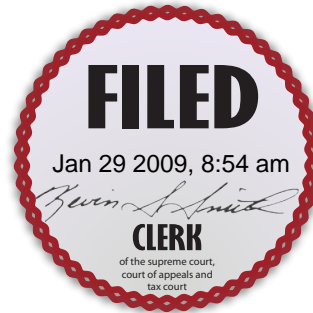


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

PHILLIP V. FREDERICK
Hazleton, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

PHILLIP V. FREDERICK,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 63A01-0809-CV-430
)	
DISCOVER BANK,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE PIKE CIRCUIT COURT
The Honorable Sherry L. Biddinger Gregg, Special Judge
Cause No. 63C01-0605-CC-156

January 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Phillip Frederick appeals the trial court's grant of summary judgment in favor of Appellee-Plaintiff Discover Bank ("Discover") following its action against Frederick seeking judgment for unpaid debt, as well as interest, attorney fees, and costs. Upon appeal, Frederick challenges this summary judgment by claiming that Discover, through its debt collector Wright & Lerch, failed to comply with the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* We affirm.

FACTS AND PROCEDURAL HISTORY

On September 13, 2005, Discover, through its debt collector Wright & Lerch, sent Frederick a letter advising him that he owed Discover \$12,283.11,¹ which Discover was seeking to collect. In this letter, Wright & Lerch informed Frederick pursuant to section 1692g(b) (2005) of the FDCPA, that he was entitled to request, within thirty days of receipt of the letter, verification of the debt and the name and address of the original creditor. In an October 7, 2005 letter in response, Frederick requested "validation" of the debt by various means, including an explanation of the debt calculation and the identification of the original creditor. In follow-up correspondence dated October 24, 2005, Wright & Lerch informed Frederick that Discover Card had advised Wright & Lerch that "[he] owe[d] them the amount set forth in [their] demand letter as of the date of that demand letter." App. p. 27. In addition, the letter informed Frederick that the original creditor in its action against him was Discover Card and that its address was "P.O. Box 8003 Hilliard OH." App. p. 27. In letters

¹ There is no explanation in the record for the discrepancy between the \$12,283.11 originally sought and the \$11,833.75 ultimately sought and awarded, along with interest, fees, and costs, in the summary judgment proceedings.

dated November 29 and December 22, 2005, Frederick informed Wright & Lerch of his belief that it had not complied with the FDCPA and requested that the firm no longer contact him.

On December 29, 2005, Discover filed a complaint² against Frederick seeking judgment against him in the amount of \$11,833.75 for the principal sum of his debt, as well as interest, attorney's fees, and costs. On August 7, 2006, Frederick filed an answer alleging, *inter alia*, various FDCPA violations by Wright & Lerch.

On March 12, 2007, Discover moved for summary judgment. In doing so, Discover designated an affidavit by a Discover account manager attesting that \$11,833.75 was due and owing on Frederick's account. On April 12, 2007, Frederick filed a response alleging FDCPA violations, moving to dismiss on that basis, and requesting damages. In doing so, Frederick designated,³ *inter alia*, his various correspondences with Discover.

Following a November 29, 2007 hearing,⁴ on June 17, 2008, the trial court entered summary judgment in favor of Discover. In entering judgment the trial court determined that Frederick owed \$11,833.75 in debt principal, \$1,000 in attorney's fees, and \$6875.18 in interest, for a total judgment in the amount of \$19,708.93 plus court costs. Frederick filed a motion to correct error on July 18, 2008, which the trial court denied on August 13, 2008. This appeal follows.

² This complaint, which was originally filed in Gibson Superior Court, was subsequently transferred to Pike Circuit Court, where it was filed on May 31, 2006.

³ It is unclear from the record whether the exhibits referenced by Frederick in his response to Discover's summary judgment motion were properly designated for purposes of summary judgment. We will assume for purposes of this appeal that they were.

⁴ The transcript of this hearing was not requested or included in the record on appeal.

DISCUSSION AND DECISION

I. Standard of Review

Our review of the instant appeal is impeded by the fact that there is no appellee's brief before us. We will not undertake the burden of developing arguments for the appellee. *Railing v. Hawkins*, 746 N.E.2d 980, 982 (Ind. Ct. App. 2001). Instead, we will apply a less stringent standard of review and may reverse the trial court when the appellant establishes prima facie error. *Id.* "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." *Id.* (quotation omitted).

Our review is also impeded, however, by Frederick's failure to provide certain documents referenced in but excluded from the record on appeal, or the applicable transcript or any portion thereof. Under Indiana Appellate Rules 50(A)(1) and (2), an appellant must provide the court with parts of the record which are necessary for the court to decide the issues presented. We will nevertheless respond to Frederick's claims.

In reviewing Frederick's challenge to the trial court's summary judgment, this court applies the same standard as the trial court. *Rhines v. Norlarco Credit Union*, 847 N.E.2d 233, 240 (Ind. Ct. App. 2006), *trans. denied*. A party seeking summary judgment must show that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)). The review of a summary judgment motion is limited to those materials designated to the trial court. *Id.* (citing T.R. 56(H)). The court accepts as true those facts alleged by the nonmoving party, construes the evidence in favor of the nonmoving party, and resolves all doubts against the

moving party. *Id.* A trial court's grant of summary judgment is clothed with a presumption of validity, and the appellant bears the burden of demonstrating that the grant of summary judgment was erroneous. *Id.*

II. Analysis

A. Defense

Frederick challenges the trial court's entry of summary judgment by arguing that Wright & Lerch did not comply with the FDCPA in seeking to collect his alleged debt. It appears that Frederick relies upon these alleged FDCPA violations as a defense to Discover's action against him. Yet an FDCPA claim "has nothing to do with whether the underlying debt is valid." *Rhines*, 847 N.E.2d at 238 (quoting *Spears v. Brennan*, 745 N.E.2d 862, 877 (Ind. Ct. App. 2001)). "An FDCPA claim concerns the method of collecting the debt. It does not arise out of the transaction creating the debt." *Id.* (quoting *Spears*, 745 N.E. 2d at 877) (internal quotation omitted). Accordingly, a debtor pursuing a FDCPA claim has two options: (1) he can make a counterclaim in the debt collection proceeding that the debt collector violated the FDCPA, or (2) he can file a separate lawsuit against the debt collector for violation of the FDCPA. *Id.* To the extent, therefore, that Frederick construes his FDCPA claim as a challenge to the summary judgment regarding his debt, interest, fees, and costs, we conclude that the FDCPA is immaterial to the assessment or validity of his debt and affirm the trial court on this ground.

B. Counterclaim

In addition, however, it appears that Frederick's FDCPA claim also constituted a counterclaim. Under Indiana Trial Rule 8(C), "If the pleading mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation." We will therefore evaluate Frederick's claim on appeal as a challenge to the trial court's summary judgment against him on his FDCPA counterclaim.

1. The FDCPA

The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e) (quoted in *Rhines*, 847 N.E.2d at 236). As this court has observed, "'The FDCPA is a broad statute that was designed to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors.'" *Rhines*, 847 N.E.2d at 236 (quoting *Spears v. Brennan*, 745 N.E.2d 862, 870 (Ind. Ct. App. 2001)) (internal quotation omitted).

With respect to a consumer's rights following notification by a debt collector of an alleged debt, the FDCPA provides in pertinent part as follows:

If the consumer notifies the debt collector in writing within the thirty-day period [after receipt of the notice] that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed

portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

15 U.S.C. § 1692g(b).

2. Analysis

Frederick argues that Wright & Lerch did not comply with the above provision in seeking to collect his debt. In responding to Frederick's dispute of the debt and request for information, Wright & Lerch stated the following in its October 24, 2005 letter:

Please be advise[d] the original credit grantor in the above referenced account was Discover Card. Their address is P.O. Box 8003 Hilliard OH. They advised us that you owe them the amount set forth in our demand letter as of the date of that demand letter. If you would like to discuss this matter please don't hesitate to contact me.

Appendix. p. 27. Frederick claims that the trial court erred in granting summary judgment because the above statement does not demonstrate compliance with section 1692g(b). In making his argument, Frederick first argues that this court in *Spears* interpreted the FDCPA to require a debt collector, when verifying the debt pursuant to the debtor's request, to provide a copy of the parties' signed contract and a detailed payment history.

Contrary to Frederick's argument, the *Spears* court imposed no such requirement. In *Spears*, a debt collector who had obtained a default judgment against a debtor without verifying the debtor's debt, in spite of the debtor's timely request that he do so, was found to have violated section 1692g(b). 745 N.E.2d at 878. The debt collector argued that the parties' consumer credit contract accompanying his notice of claim in small claims court, which he filed before the debtor requested verification, should constitute adequate

verification. *Id.* This court rejected that argument, observing that the contract did not contain the current amount of the debt, nor did it include a payment history or other means evidencing the current amount of the claimed debt. *See id.* In sum, *Spears* merely suggests that a debtor-creditor contract containing an outdated debt amount, sent to the debtor before he requests verification, does not constitute adequate verification under section 1692g(b). *See id.* It certainly does not state or imply that proper verification requires a signed contract and the debtor's detailed payment history. Accordingly, we reject Frederick's challenge to summary judgment based on *Spears*.

Frederick also argues that *Fields v. Wilber Law Firm, P.C.*, 383 F.3d 562 (7th Cir. 2004), reinforces his claim that a detailed payment history is necessary to satisfy verification requirements. Yet, as is even apparent from the quotation Frederick includes in his brief, *Fields* addresses claims under 15 U.S.C. §§1692e and 1692f regarding deceptive practices such as mischaracterization of a debt. 383 F.3d at 565. As the *Fields* court stated, “[D]ebt collectors must . . . clearly and fairly communicate information about the amount of the debt to debtors. This includes how the total amount due was determined *if the demand for payment includes add-on expenses like attorneys’ fees or collection costs.*” *Id.* at 565 (emphasis supplied). In such cases involving these add-on expenses, the *Fields* court suggested an itemization of the various charges comprising the total debt. *Id.* at 566. Here, in contrast, Frederick does not claim that his debt included improper add-on expenses. He simply challenges the verification of his debt on the grounds that the individual charges comprising the amount claimed were not itemized. But Frederick provides no authority

suggesting that verification of the debt requires such itemization. Indeed, relevant authority holds to the contrary.

“[V]erification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt.” *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999). “Consistent with the legislative history, verification is only intended to ‘eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.’” *Id.* (quoting S. Rep. No. 95-382, at 4 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1699). There is no concomitant obligation to forward copies of bills or other detailed evidence of the debt. *Id.* Given this authority and the inapplicability of *Spears* and *Fields*, we are not inclined, on this record, to reverse the trial court’s summary judgment.

Having reached this conclusion, we wish to point out that it is not an endorsement of the debt collector’s practices in this case. Wright & Lerch’s October 24, 2005 response letter, purportedly of verification, contained no actual statement or independent documentation of the debt owed, and the debt it referenced, the \$12,283.11 requested in the notice, was not the amount ultimately sought in its action against Frederick. Such minimal efforts at verification do not appear to be in the spirit, if the letter, of section 1692g(b), which requires a copy of the debt verification to be sent to the debtor. Were this a more complete appellate record, we would be inclined to reverse on these grounds, especially given the

absence of any effort by the appellee to provide a brief or assist in any way with our understanding of its actions or lack thereof.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.